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DOCKETS

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43-07-BZ

346-360 West 17th Street, Through lot fronting West 16th and West 17th Streets on the block between 8th and 9th Avenues, Block 740, Lot(s) 55 Borough of **Manhattan, Community Board: 4**. Under 72-21-Transient hotel.

44-07-BZ

171-173 East 83rd Street, Northwest corner of East 83rd Street & Third Avenues., Block 1512, Lot(s) 33 Borough of **Manhattan, Community Board: 8**. (SPECIAL PERMIT)-73-36-To legalize a Physical Culture Establishment for Bikram Yogaa NYC, on the second floor in a six story mixed-use building.

45-07-A

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DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MARCH 13, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 13, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

854-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc. R & M, owner.

SUBJECT – Application January 22, 2007 – Extension of Time to obtain a Certificate of Occupancy and waiver of the Rules of Practice and Procedure which expired on September 21, 2000 in a C2-2/R3-2 zoning district.

PREMISES AFFECTED – 188-02 to 188-10 Hillside Avenue, 88-01 to 88-09 188th Street, Block 10453, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 277 Park Avenue, LLC, owner; Manhattan Athletic Club, LLC, lessee.

SUBJECT – Application December 8, 2006 – Extension of Term/Amendment-For the operation of a Physical Culture or Health Establishment for an additional ten (10) years, and to add 479 square feet to the club for the purposes of a boxing room. The site is located in a C5-3(SMD) &C6-6 zoning district.

PREMISES AFFECTED – 277 Park Avenue, east side of Park Avenue and 47th Street, Block 1302, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

97-97-BZII

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application February 12, 2007 – Extension of Time and a waiver of the rules, to obtain a Certificate of Occupancy for a previously granted variance to allow in an R-5 zoning district; the construction and maintenance of a gasoline service station with an accessory convenience store which expired April 19, 2006.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, aka 1419/21 Rosedale Avenue, Block 3894, Lot 28, Borough of The Bronx.

COMMUNITY BOARD #9BX

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by enlarging the existing building and eliminating the use of the lubritorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

150-00-BZIII

APPLICANT – Eric Palatnik, P.C., for Yeshiva of Far Rockaway, owner.

SUBJECT – Application February 15, 2007 – Extension of Time to complete construction and obtain a certificate of occupancy for a variance for additional floor area on the second floor to an existing two story synagogue and yeshiva which expired January 25, 2007 in an R-2 zoning district.

PREMISES AFFECTED – 802 Hicksville Road, corner of Beach 9th Street, Block 15583, Lot 16, Borough of Queens.

COMMUNITY BOARD #14Q

APPEALS CALENDAR

6-07-A thru 9-07-A

APPLICANT – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

SUBJECT – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

PREMISES AFFECTED – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25th Road*) between 127th Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

COMMUNITY BOARD #7Q

150-06-A & 151-06-A

APPLICANT – Kathleen R. Bradshaw, for Frank Gallo, owner.

SUBJECT – Application July 7, 2006 – Proposed construction of two, two – family dwellings located within the bed of a mapped street contrary to General City Law Section 35. R4A Zoning District .

CALENDAR

PREMISES AFFECTED – 2550 & 2552 Kingsland Avenue, between Mace Avenue and Allerton Avenue, Block 4488, Lots 30 & 32, Borough of Bronx.

COMMUNITY BOARD #11BX

MARCH 13, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 13, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

10-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Samuel Benitez, owner.

SUBJECT – Application January 20, 2005 – Variance under (§ 72-21) to allow a five (5) story residential building containing eighteen (18) dwelling units and thirteen (13) parking spaces in an M1-2 zoning district; contrary to use regulations (§ 42-00).

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th Street, between 4th and 5th Avenues, Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

163-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (23-141c), front yard (23-45), side yards (23-462), and off-street parking (25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

278-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

294-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for John and Steven, Inc., owner; Club Fitness NY, lessee. SUBJECT – Application November 8, 2006 – Special Permit (§73-36) to allow the proposed PCE on the second and third floors in a three-story building. The Premises is located in a C2-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 31-11 Broadway, between 31st and 32nd Street, Block 613, Lots 1 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

301-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

303-06-BZ

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications, Inc., for Verrazano Garden Apartments, Inc., owner.

SUBJECT – Application November 14, 2006 – Special Permit 73-30: Install non-accessory 75' radio tower, with related equipment, on a portion of the property (Block 3107, Lot 12), a lot consisting of 51,458 SF, located in an R3-2 zoning district.

PREMISES AFFECTED – 1081 Tompkins Avenue, 220' north of Tompkins Avenue and Richmond Avenue, Block 3107, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, FEBRUARY 13, 2007 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, November 14, 2006 as printed in the bulletin of November 23, 2006, Vol. 91, Nos. 43 & 44. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC, owner; Helm Bros., lessee.

SUBJECT – Application November 16, 2006 – Extension of Time/Waiver to complete construction to permit the erection of a second story (5,000 sq. ft.) to the existing (UG6) commercial building (auto repair shop, sales and exchange of vehicles and products) which expired on April 29, 2005, located in a C2-2(R6B) and R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction, which expired on April 29, 2005; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the subject premises is located on the south side of Northern Boulevard between 208th Street and Oceania Street; and

WHEREAS, the site is located partially within a C2-2 (R6B) zoning district and partially within an R4 zoning district; and

WHEREAS, the site is improved upon with a 5,000 sq. ft. one-story commercial building occupied by an automotive repair shop and a sales area; and

WHEREAS, on December 13, 1955, the Board granted a variance to permit the reconstruction of an automotive repair

facility in a residential zoning district; and

WHEREAS, at various times, the grant was amended and extended; and

WHEREAS, on March 6, 2001, the Board granted a special permit to allow the construction of a second floor to the existing commercial building to be occupied by office and storage space; the term to complete construction expired on March 6, 2003; and

WHEREAS, on April 29, 2003, the Board granted an extension of time to complete construction and obtain a certificate of occupancy for an additional two years to expire on April 29, 2005; and

WHEREAS, the applicant represents that the addition has not been constructed and the certificate of occupancy has not been obtained due, in part, to an administrative delay; and

WHEREAS, the applicant states that the construction is projected to be completed in the summer of 2008; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 13, 1955, so that as amended this portion of the resolution shall read: “to grant an extension of time for two years from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT substantial construction shall be completed by February 13, 2009;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401113816)

Adopted by the Board of Standards and Appeals, February 13, 2007.

104-02-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC., owner; Helms Brothers, lessee.

SUBJECT – Application November 16, 2006 – Extension of Time to complete construction and waiver of the rules which expired on August 13, 2006 for the construction of a new car preparation building (Use Group 16B) at an existing automobile storage facility in a C-3 zoning district.

PREMISES AFFECTED – 23-40 120th Street, west side of 120th Street, between 25th Avenue and 23rd Avenue, Block 4223, Lot 21, Borough of Queens.

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COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction, which expired on August 13, 2006; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the subject premises is located on the west side of 120th Street between 25th Avenue and 23rd Avenue; and

WHEREAS, the site is occupied by a small one-story shed and an outdoor automobile storage facility, located within a C3 zoning district; and

WHEREAS, on August 13, 2002, the Board granted a variance to permit the construction of a new car preparation building (UG 16B) at an existing automobile storage facility; and

WHEREAS, the applicant represents that the new building has not been constructed and the certificate of occupancy has not been obtained due, in part, to an administrative delay; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 13, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time for four years from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT substantial construction shall be completed by February 13, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401420020)

Adopted by the Board of Standards and Appeals, February 13, 2007.

717-60-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for continued hearing.

27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Opposition: Kathy Grove, Larry List, Marilyn Stern, Nicholas Lecakes and Jonathan Gouldner.

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ACTION OF THE BOARD – Laid over to March 6, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district.

Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed two-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 24, 2005, after due notice by publication in *The City Record*, with continued hearings on December 5, 2006 and January 9, 2007, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, State Senator Jeffrey D. Klein and the Morris Park Community Association provided letters in support of the appeal; and

WHEREAS, certain neighbors also submitted letters in support of the appeal; and

WHEREAS, however, the adjacent neighbors at 1719 Hering Avenue and their counsel appeared in opposition to the appeal; and

WHEREAS, the applicant states that the subject premises consists of a 2,500 sq. ft. lot on the east side of Hering Avenue, between Morris Park Avenue and Van Nest Avenue; and

WHEREAS, the applicant proposes to develop the site with a two-story two-family semi-detached residential building, which will occupy a total of 1,870 sq. ft. of floor area (0.75 FAR) (hereinafter, the “Building”); and

WHEREAS, the site was formerly located within an R4 zoning district; and

WHEREAS, the Building complies with the former R4 zoning district parameters; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Morris Park Rezoning, which rezoned the site to R4A; and

WHEREAS, the Building does not comply with the R4A zoning district parameters as to side and front yards; and

WHEREAS, specifically, as to side yards, R4A zoning district regulations require two side yards with a total width of 10 ft. and a minimum of 8 ft. between buildings on adjacent lots; a single 8 ft. side yard is proposed; and

WHEREAS, as to the front yard, R4A zoning district regulations require that the front yard be as deep as that provided on the adjacent lot; a 10 ft. front yard that is not as deep as the adjacent front yard is proposed; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the record indicates that New Building Permit No. 200821968 (hereinafter, the “New Building Permit”) was lawfully issued to the owner by DOB prior to the Rezoning Date, on June 20, 2005; and

WHEREAS, the Opposition did not contest the validity of the New Building Permit, nor did DOB inform the Board that the New Building Permit was invalid; and

WHEREAS, thus, the Board accepts that the permits were validly issued by DOB to the owner of the subject premises and were in effect until the Rezoning Date; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under them, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance.”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’ . Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner completed site preparation, excavation, the installation of footing forms and rebar, and poured 14.5 cubic yards of concrete out of a total of approximately 44.5 cubic yards of

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concrete required for foundation work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site; affidavits from the general contractor and concrete contractor, stating the amount of work completed; and copies of pour tickets, a rebar invoice, cancelled checks, and accounting summaries; and

WHEREAS, the general contractor states that excavation and site clearing were completed on September 27 and 28, 2005 and that a portion of the footings were poured on September 29, 2005; and

WHEREAS, the concrete contractor, by his affidavit, agrees that concrete was poured on September 29, 2005; and

WHEREAS, however, the Board notes that there is a conflict about what transpired at the site on September 29, 2005; and

WHEREAS, specifically, one of the neighbors who appeared in opposition submitted an affidavit stating that she observed the commencement of the excavation on September 29, 2005 and, that on that date, she called DOB to report unsafe conditions; and

WHEREAS, this neighbor states that a DOB inspector was dispatched to the site for an inspection on that date; and

WHEREAS, DOB records show that the call requesting an inspection of the site was placed at 10:09 a.m. on September 29, 2005; and

WHEREAS, DOB records do not indicate what time the inspection was made, but the contractor states that the inspection occurred between noon and 1:00 p.m.; and

WHEREAS, the DOB inspector filed a report of the inspection on October 3, 2005, which stated that excavation was in progress at the site and that no forms or footings were installed; and

WHEREAS, additionally, former Councilwoman Madeline Provenzano, whose property abuts 1715 and 1717 Hering Avenue at the rear, also submitted an affidavit in opposition and

WHEREAS, former Councilwoman Provenzano represents that on September 29, 2005, she observed construction activity at the site, but did not see any concrete poured on that day or any day until November 1, 2005; and

WHEREAS, in contrast to this testimony, a tenant of the other adjacent property stated that she observed concrete being poured on September 29, 2005; and

WHEREAS, the concrete pour tickets reflect the contractor's claim that concrete deliveries were made to the site on September 29, 2005 at 2:45 p.m. and 3:51 p.m.; and

WHEREAS, the applicant also notes that since the subject site is small, it is possible to complete excavation and begin foundation work on the same day, as the contractor purports; and

WHEREAS, the Board has considered the submitted evidence and the conflicting affidavits and testimony as to the activities at the site on September 29, 2005; and

WHEREAS, the Board first notes that no neighbor who appeared in opposition claims to have observed the site continuously for the entire day; and

WHEREAS, accordingly, the claim that concrete was

poured in the afternoon has not been specifically refuted; and

WHEREAS, further, the Board notes that adjacent property owners are interested parties and, as such, their statements may appropriately be given less weight than the tenant who recalled that she saw concrete being poured, since she has no stake in the outcome of this application; and

WHEREAS, the neighbors in opposition also submitted photographs of the site taken on October 13 and 14, 2005 in support of the assertion that no foundation work had been performed prior the Rezoning Date; and

WHEREAS, however, these photographs are not dispositive; and

WHEREAS, the Board observes that these photographs do not dispel the possibility that footings may be submerged in the earth as is typical of this kind of construction, or that they otherwise may not be visible due to the opaqueness of the water present at the site; and

WHEREAS, notwithstanding the above-mentioned observations about the conflicting versions of what transpired on the site on September 29, 2005 and the photographs, the Board finds it unnecessary to resolve this dispute for purposes of resolving this appeal; and

WHEREAS, instead, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site prior to the rezoning even if the alleged concrete pour on September 29 is excluded from the analysis; and

WHEREAS, the Board has reviewed the cases cited in the applicant's November 29, 2005, November 6, 2006, and January 4, 2007 submissions, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, specifically, the applicant cites to Ageloff v. Young, 282 A.D. 707 (2d Dept. 1953) where the court found vested rights were established by staking, clearing, and excavating the site, and contracting for architectural services, and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955) where the court found vested rights were established by clearing trees and billboards in anticipation of construction work; and

WHEREAS, the Board notes that the courts in Ageloff and Hasco accepted site preparation work, the losses associated with it, and the expended soft costs to be sufficient to establish the right to vest under the common law; and

WHEREAS, in light of these cases, even assuming that the footings had not been installed as of the Rezoning Date, the Board still characterizes the work performed at the site as substantial; and

WHEREAS, the Board also notes that the site preparation and excavation at the site indisputably occurred prior to the Rezoning Date; and

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WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$99,113.81, including hard and soft costs and financing (but not the cost of the concrete pour for the footings), out of \$413,500.00 budgeted for the entire project; and

WHEREAS, the Board observes that the expenditures on hard costs alone prior to the Rezoning Date are \$31,000.00 out of a total \$295,000.00 required for the project; and

WHEREAS, the applicant documents additional hard costs incurred after the Rezoning Date, but the Board does not credit these expenses; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices (including a rebar invoice, dated September 26, 2005), cancelled checks, and accounting reports; and

WHEREAS, the Board considers the amount of expenditures significant, both in of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, the Opposition contends that the applicant provided conflicting records in support of the claims about the completed concrete pouring; and

WHEREAS, the applicant acknowledged that there was a discrepancy about the amount of concrete poured and its expense, which occurred because the concrete contractor initially submitted records for progress payments rather than an accurate reflection of the timeline of construction; and

WHEREAS, however, because the Board finds it unnecessary to include the concrete costs into the analysis, this contention is irrelevant; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$99,113.81 associated with pre-Rezoning Date project costs that would result if this appeal was denied is significant; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if front and side yard limitations of the new zoning were imposed; and

WHEREAS, specifically, the inability to develop the proposed home would require the owner to clear the site, re-design the Building, and re-pour the foundation; and

WHEREAS, the applicant represents that a complying home would have a floor plate with a usable width of only 12'-4", due to the R4A zoning district's required side yards

and distance between buildings on adjacent lots, and would be uninhabitable; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying home, and the \$99,113.81 of actual expenditures that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Opposition expressed the following additional concerns about various other aspects of this application: (1) the Building will be attached to one of the adjacent homes, resulting in a semi-detached condition, (2) work was performed on the site after the Rezoning Date, (3) the time to appeal had expired, and (4) the standards to vest under ZR § 11-311 had not been met; and

WHEREAS, as to the semi-detached condition, the Board observes that the R4 zoning permits a semi-detached home with one side yard, as proposed; and

WHEREAS, as to the continued work at the site, the Board acknowledges that work continued after the change in zoning, but the Board only considered work performed prior to the Rezoning Date and costs associated with that work and disregarded any illegal work and costs associated with work performed after this date; and

WHEREAS, as to the timeliness of the appeal, the Board notes that the Opposition cites to the incorrect standard for bringing an appeal to vest under the common law; and

WHEREAS, specifically, the Opposition claims that the owner had 30 days to appeal from the date of the rezoning; and

WHEREAS, the Board notes that the appropriate standard for a common law vesting case is 30 days from a final determination from the DOB; and

WHEREAS, in this case, the applicant filed the appeal within 30 days of the November 1, 2005 stop work order; and

WHEREAS, the Board also notes that the standards required for a vesting under ZR § 11-311 are different than those required for a vesting under the common law; and

WHEREAS, specifically, there is no absolute requirement that substantial work be completed on the foundation under the common law; and

WHEREAS, additionally, under a common law vesting case, the Board may consider expenditures (including soft costs) and predicted economic loss should vesting not be granted; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of

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DOB Permit No. 200821968, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, February 13, 2007.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. § 11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

THE RESOLUTION:

WHEREAS, this is an application under Z.R. § 11-331 to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in *The City Record*, with continued hearings on October 24, 2006, November 14, 2006, December 12, 2006 and January 23, 2007, and then to decision on February 13, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommended disapproval of the instant application; and

WHEREAS, the site had a site examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, the subject site is located on the northwest corner of Avenue P and East 17th Street; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, on February 8, 2006, the developer of the site (the “Developer”) obtained, though professional certification, approval for plans for a six-story residential condominium building; and

WHEREAS, the applicant further states that a building permit (NB Permit No. 302073681, hereinafter, the “Permit”) was issued on March 7, 2006, based upon these plans; and

WHEREAS, the applicant represents that work commenced thereafter until March 10, 2006, when DOB issued

a stop-work order for failure to provide shoring on the northern side of the development site; and

WHEREAS, the Developer apparently obtained a court order that facilitated this shoring work on March 17, 2006; and

WHEREAS, the shoring work was allegedly completed on April 4, 2006, and the stop-work order as to further development on the site was rescinded; and

WHEREAS, on April 5, 2006 (the “Rezoning Date”), the City Planning Commission approved the Midwood Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, under the R4-1 zoning district regulations, only detached and semi-detached one-or-two family homes are permitted; thus, the proposed six-story condominium would not be permitted; and

WHEREAS, pursuant to Z.R. § 11-331, the Board may renew a building permit that lapsed due to a rezoning for a period of six months, thus allowing construction to continue under the prior zoning, so long as the Board finds that on the date the permit lapsed, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, a pre-requisite for a renewal under 11-331 is the issuance of a building permit, lawfully issued as set forth in Z.R. § 11-31; and

WHEREAS, specifically, Z.R. § 11-31 (a) provides: “A lawfully issued building permit shall be a building permit which is based upon an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to the [Zoning Resolution]. In case of dispute as to whether an application includes ‘complete plans and specifications’ as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, during the hearing on this application, the applicant claimed that the Permit was valid and that it should be credited by the Board for purposes of finding that a right to continue construction existed pursuant to ZR § 11-331; and

WHEREAS, however, the Department of Buildings made numerous submission as to whether the application for the Permit included “complete plans and specifications”; and

WHEREAS, in a submission dated December 20, 2006, DOB stated, in sum and substance, that two outstanding objections remained as to the professionally certified plans associated with the NB Permit, which were not resolved prior to the Rezoning Date: (1) the failure to demonstrate compliance with the Quality Housing Program standards and requirements set forth in ZR Article II, Chapter 8 and (2); the failure to provide accessibility to individuals with disabilities through the provision of an entrance ramp, as required by Building Code § 27-292.5(a); and

WHEREAS, as to the Quality Housing issue, DOB states that the plans fail to illustrate tree plantings, as required by ZR § 28-12, and planting areas, as required by ZR § 28-33; and

WHEREAS, DOB contends that these failures are significant, given that the Quality Housing Program presumes compliance with all applicable requirements in order to gain the

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additional floor area and make use of additional mechanical floor area deductions that the Program allows; and

WHEREAS, further, if the required plantings were properly reflected on the plans, the building footprint would change, as illustrated on revised plans submitted by the Developer to DOB after the Rezoning Date; and

WHEREAS, as to the entrance ramp, DOB states that the objection is significant, given that the proposed building would need to be redesigned in order to provide the ramp; and

WHEREAS, in its January 29, 2007 submission, the applicant included an affidavit from a consulting engineer, which reveals that the two objections were not remedied until well after the Rezoning Date; and

WHEREAS, DOB maintains that these non-compliances with applicable laws cannot be cured after the Rezoning Date; and

WHEREAS, in sum, DOB has concluded that the approved plans do not demonstrate compliance with all applicable laws, and therefore are not “complete plans and specifications” per ZR § 11-31(a); and

WHEREAS, it follows that the Permit is not a “lawfully issued permit” as defined by ZR § 11-31(a) and as required pursuant to ZR § 11-311 for a renewal; and

WHEREAS, under ZR § 11-31 et seq., the Board must defer to DOB’s authority under 11-31(a) to make a determination as to whether the permit was lawful and based upon complete plans and specifications; and

WHEREAS, arguments in opposition to this determination are not properly before the Board in this application; and

WHEREAS, nevertheless, the applicant expressed its disagreement with DOB’s conclusion as to the Permit during the public hearing process for this application; and

WHEREAS, first, the applicant contends that the Permit was not revoked officially by DOB until April 19, 2006, and that prior to that date, the objections had been cured; and

WHEREAS, however, the Board observes that DOB’s revocation of the Permit after the Rezoning Date is not relevant; and

WHEREAS, the right to continue construction under ZR § 11-31 et seq. may only be obtained when the work performed prior to the Rezoning Date was constructed pursuant to a legal permit; and

WHEREAS, on the Rezoning Date, the illegalities reflected on the plans underlying the Permit had not been cured; and

WHEREAS, the subsequent cure of these illegalities after the Rezoning Date is of no import; and

WHEREAS, a review of ZR § 11-311 illuminates why this is the case; and

WHEREAS, this provision reads in pertinent part: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31, paragraph (a) . . .” (*emphasis added*); and

WHEREAS, the relevant date is plainly stated, and that

date is the effective date of the rezoning; and

WHEREAS, a permit made lawful through plan amendments made subsequent to the date of a rezoning does not meet the standard set forth at ZR § 11-331; and

WHEREAS, further, the Board observes that if DOB allowed permit holders to bring the permits into compliance with all applicable laws after a rezoning for purposes of vesting, there would be no need for a lawfully issued permit at any point; and

WHEREAS, instead, a permit applicant could file plans that do not comply with law, with the expectation that if DOB discovered the unlawfulness after the rezoning, it would not matter for vesting purposes; and

WHEREAS, second, the applicant alleges that DOB has, in the context of other statutory vesting applications before the Board, resolved outstanding objections to plans after the date of the rezoning; and

WHEREAS, specifically, the applicant cites to two statutory vesting applications (BSA Cal. Nos. 324-05-BZY and 326-05-BZY), where DOB issued objections to the underlying plans subsequent to audits conducted while the cases were pending before the Board and well after the zoning change; and

WHEREAS, in both of these cases, the objections were resolved and DOB did not determine that the permits were invalid; and

WHEREAS, the applicant apparently theorizes that each and every objection cited by DOB was correctly raised, and that the developers in the two cases submitted revised plans showing compliance where no such compliance was shown before; and

WHEREAS, however, a review of the DOB objection sheets from the prior cases reveals that the great majority of the Building Code objections were resolved not through a change to plans subsequent to an admission of unlawfulness, but rather through: (1) an acknowledgement by DOB that a prior version of the Building Code applied, or (2) a showing that that the particular matter objected to had already been resolved through a reconsideration by a DOB official at a higher level than the examiner; and

WHEREAS, in other words, the developers in the two prior cases were able to preserve a DOB determination that the construction permits were valid by showing DOB why the objections were improper; and

WHEREAS, the Developer here has been unable to similarly convince DOB as to the objections to its plans; and

WHEREAS, further, many of the objections for both prior cases were very minor detail concerns related to plan notations, unrelated to either the ZR or the Building Code in a substantive manner; and

WHEREAS, that such minor plan notation details do not compromise the validity of a permit is evidenced by DOB’s ultimate determination that the permits in both prior cases were valid; the minor details, unlike the significant ZR and Building Code deficiencies discussed by DOB in the instant case, did not support a determination that the permits were based on incomplete plans and specifications; and

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WHEREAS, thus, in accordance with 11-31(a), the Board deferred to DOB's expertise in determining whether the underlying permits for these two prior cases were based upon complete plans and specifications; and

WHEREAS, finally, the applicant raises allegations that the Developer was unreasonably obstructed in his attempts to gain DOB review of the plans underlying the Permit in advance of the Rezoning Date; and

WHEREAS, DOB refuted this contention, noting that the Developer's representative had frequent meetings with DOB's examination staff, and that four out of seven scheduled meetings between March 22, 2006 and April 14, 2006 were in fact cancelled by the Developer's representative; and

WHEREAS, the Board observes that the applicant's representations about negligence or improper process at DOB are not supported by the record; and

WHEREAS, in sum, while the Board defers to DOB as to the validity of the Permit, even if it were to consider applicant's arguments, it would decline to credit any of them; and

WHEREAS, therefore, based upon DOB's determination here, the Board concludes that the work performed at the site was not completed pursuant to a valid permit; and

WHEREAS, accordingly, relief pursuant to ZR § 11-331 is unavailable.

Therefore it is Resolved that this application to renew New Building Permit No. 302073681 pursuant to Z.R. § 11-331 is denied.

Adopted by the Board of Standards and Appeals, February 13, 2007.

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.

SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor development for a multi-family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction;

and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, with continued hearings on December 12, 2006 and January 30, 2007, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located south of the corner formed by the intersection of 84th Drive and 162nd Street; and

WHEREAS, the site was formerly located within an R4 zoning district; and

WHEREAS, the applicant states that on June 16, 2006, the developer of the site (the "Developer") obtained a Department of Buildings' permit (NB Permit No. 402400380) for a three-family residential building (hereinafter, the "Permit"); and

WHEREAS, the applicant states that excavation and foundation work commenced thereafter; and

WHEREAS, however, on June 29, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Jamaica Hill/Hillcrest rezoning proposal, which changed the zoning district from R4 to R4A; and

WHEREAS, this zoning change rendered the development non-complying as to the amount of dwelling units, since the R4A district only allows detached single and two-family homes; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before

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Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) a lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates construction of one building on a single zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that the Permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the Board has reviewed the record and notes that DOB has not expressed any concern about the validity of the Permit; thus, there is no question as to the lawfulness of the Permit in this matter; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, more specifically, the applicant states that all of the excavation and foundation work was completed, and that no more concrete needs to be poured for the foundation; and

WHEREAS, as to excavation, the applicant states that subsequent to the completion of sheeting and shoring work on June 12, 2006, the excavation commenced on June 22, 2006; and

WHEREAS, the applicant submitted an affidavit from the project engineer, who noted that as of June 23, 2006, the excavation was 90 percent complete; and

WHEREAS, the project engineer also explained that excavation work continued and was completed as of June 24, 2006, as evidenced by invoices from trucking companies for soil removal; and

WHEREAS, finally, the engineer notes that his office visually inspected the site on June 30, 2006, and observed that the installation of the foundation was completed; and

WHEREAS, thus, the applicant concludes that excavation was completed prior to the Rezoning Date; and

WHEREAS, in a series of submissions, DOB expressed its disagreement with the applicant as to this conclusion; and

WHEREAS, in a submission dated November 15, 2006, DOB initially cited to a violation report issued by a DOB inspector on July 10, 2006; this report reads in pertinent part: "At inspection time being removed excavation shoring and loading on truck, (6) employees working and excavator at inspection."; and

WHEREAS, on the basis of this inspection report, DOB concluded that excavation was not complete as of the Rezoning Date; and

WHEREAS, subsequently, in a submission dated December 6, 2006, DOB provided pictures taken during the

July 10, 2006 inspection, which show mounds of dirt within the excavation, and an excavator lifting what appears to be shoring materials; and

WHEREAS, DOB suggested that the inspector also observed backfilling and grading in the excavated area between the exterior foundation walls and the adjoining premises; and

WHEREAS, DOB characterized this work as "finish work," but suggested to the Board that it was also part of the excavation; and

WHEREAS, DOB also noted that the pictures illustrate that a soil heap that was previously on the floor of the excavated hole was removed; and

WHEREAS, again, DOB concluded that excavation was not complete as of the Rezoning Date; and

WHEREAS, subsequently, in a submission dated January 9, 2007, DOB argued that the developer had not excavated that part of the site where a concrete slab was proposed, in the bed of the excavation, as of the Rezoning Date; and

WHEREAS, additionally, DOB also alleged that a center foundation wall did not appear to be installed, and concluded that if it was not installed, then the excavation for such a wall had not been completed; and

WHEREAS, DOB also expressed concern that the foundation walls had not been installed to the depth indicated on the approved plans, although it was uncertain if this was the case; and

WHEREAS, notwithstanding the above allegations, DOB distilled its arguments in opposition to this application in its final submission, dated February 6, 2007; and

WHEREAS, in this submission, DOB suggests that the following activities constitute excavation performed after the Rezoning Date: (1) the removal of the soil heap; and (2) the removal of soil between the foundation walls and the adjoining premises; and

WHEREAS, DOB also cited to certain dictionary definitions of the word "excavation" in support of the argument that such soil-related activities at a construction site can properly be characterized as excavation; and

WHEREAS, the Board understands that the statute under which the applicant seeks relief requires that excavation be completed; and

WHEREAS, however, the Board disagrees that the Developer failed to meet this test; and

WHEREAS, the Board observes that all elements of the foundation work have been installed on the site; and

WHEREAS, it is difficult for this Board to understand DOB's contention that every instance of earth-related work on a construction site constitutes excavation for purposes of the statute in light of the reality that all of the foundation work has been completed; and

WHEREAS, instead, depending on the circumstances, certain of the activities cited by DOB are outside the scope of excavation for purposes of ZR § 11-331; and

WHEREAS, for instance, in this matter, the Board would not consider the following activities to be "excavation": removal or redistribution of soil heaps (of previously excavated

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soil) or backfill, the grading of a site already excavated to a depth required to install the foundation walls in preparation for a non-foundational building element, the removal of soil outside the foundation walls for a reason unrelated to foundation work, or the removal of shoring materials; and

WHEREAS, the Board respects the assistance that DOB affords it in statutory vesting cases when there is a question as to the validity of the permit and acknowledges that as an agency that enforces the Building Code, DOB has a broad understanding of construction practice; and

WHEREAS, nevertheless, a determination as to what constitutes excavation in the context of applications of this type is solely within the Board's jurisdiction and realm of expertise, and reliance upon dictionary definitions is not necessary; and

WHEREAS, accordingly, the Board finds that excavation was completed as of the Rezoning Date; and

WHEREAS, as to the foundation, the applicant states that almost all foundation work was completed as of the effective time of the Rezoning; and

WHEREAS, the applicant notes that 238 of the 250 cubic yards of concrete required for the foundation were poured as of this effective time; and

WHEREAS, the applicant has provided substantial evidence in support of the contention that almost all foundation work has been completed, in the form of affidavits from a representative of the construction company that performed the foundation work, photographs of the site, and a foundation survey; and

WHEREAS, in support of the contention that 238 cubic yards of concrete were poured for the foundation prior to the effective time of the Rezoning, the applicant has submitted pour tickets from a concrete batching company, reflecting the claimed amount of concrete pours and the dates; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which indicate that all of the cost of completing the footings and foundation walls had been incurred as of the Rezoning Date; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, thus, the Board concludes that substantial progress had been made on foundations as of the Rezoning Date; and

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 402400380 pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on August 13, 2007.

Adopted by the Board of Standards and Appeals, February 13, 2007.

77-06-A & 78-06-A

APPLICANT – Stephen J. Rizzo, Esq., for Block 7092 LLC, owner.

SUBJECT – Application April 27, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the zoning district regulations in effect as of March 1999. R3-2 Zoning District.

PREMISES AFFECTED – 96 Crabtree Avenue, Woodrow Road east of Turner Street, Block 7092, Lot 1, Block 7105, Lots 555 & 561, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Bradley Sreew.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 10 A.M., for decision, hearing closed.

292-06-A

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A and Mx-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

For Administrative: Marisa Sasitorn, Department of Buildings.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 13, 2007
1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

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ZONING CALENDAR

178-06-BZ

CEQR #07-BSA-008M

APPLICANT – The Law Office of Fredrick A. Becker, for Zurich Holding, Co., LLC, owner; Samson International Inc. d/b/a Nao Spa, lessee.

SUBJECT – Application August 16, 2006 – Special Permit (§73-36) to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

PREMISES AFFECTED – 609 Madison Avenue, southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 9, 2006, acting on Department of Buildings Application No. 104241544, reads in pertinent part:

“Proposed Physical Culture Establishment is not an ‘as-of-right’ use in a C5-3 (Midtown) zoning district. (ZR 32-00)”;

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District (MID), the establishment of a physical culture establishment (PCE) on portions of the cellar level and first and second floors of an existing mixed-use commercial and residential building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Madison Avenue and East 58th Street; and

WHEREAS, the site is occupied by a five-story with penthouse mixed-use commercial and residential building; and

WHEREAS, the spa currently occupies a total of 4,635 sq. ft., which includes 1,030 sq. ft. of space in the cellar, 950 sq. ft. of floor area on the first floor, and 2,655 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the facility offers beauty salon and accessory spa services, including haircutting and related services and facials; and

WHEREAS, because the applicant proposes to offer massages in the future, the special permit for a PCE is required; and

WHEREAS, the Board notes that the spa began operating at the site on October 1, 2006; however, massages are not offered yet and therefore, the special permit was not necessary; and

WHEREAS, the spa is operated under the name Nao Spa; and

WHEREAS, the proposed PCE will maintain the following hours of operation: Monday through Saturday, 8:30 a.m. to 7:00 p.m., and will be closed on Sunday; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the establishment of the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.06BSA008M, dated November 7, 2006; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

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with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 (MID) zoning district, the establishment of a physical culture establishment on portions of the cellar level and first and second floors of an existing mixed-use commercial and residential building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 17, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Saturday, 8:30 a.m. to 7:00 p.m., and the PCE shall be closed on Sunday;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 13, 2007.

181-06-BZ

CEQR #07-BSA-010M

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 – Zoning variance pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§42-10 and §111-104(d)).

PREMISES AFFECTED – 471 Washington Street (a/k/a 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Margo Flug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 13, 2006, acting on Department of Buildings Application No. 104439546, reads in pertinent part:

“Proposed residential dwelling units are not permitted as-of-right in M1-5 district within area B-2 of the Special Tribeca Mixed District and it is contrary to ZR 42-10 and ZR 111-104(d)”; and 1

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5 zoning district, within Area B2 of the Special Tribeca Mixed Use District, a nine-story residential building with retail use on the first floor and seven dwelling units above, which is contrary to ZR §§ 42-00 and ZR 111-104(d); and

WHEREAS, the proposed building will have a total floor area of 29,118 sq. ft. (4.99 FAR), a residential FAR of 4.53, a street wall height of 66’-0” on Washington Street and 102’-0” on Canal Street, a total height of 110’-6”, without bulkheads, a maximum total height of 124’-6”, with bulkheads; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in the *City Record*, with a continued hearing on January 9, 2007, and then to decision on February 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, Canal West provided testimony in support of this application citing in particular the proposed plan to maintain the continuity of the street wall on Canal Street and Washington Street and the setback provided adjacent to the townhouses on Canal Street; and

WHEREAS, a certain neighbor provided testimony in opposition to this application, citing concerns about the building height; and

WHEREAS, the subject premises is located on the

1 The Board notes that ZR § 111-104(d) has been re-designated ZR § 111-104(e) in a recent text amendment; however, the text of the provision remains the same and this has no bearing on the Board’s waiver of the provision.

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southeast corner of Washington Street and Canal Street, and has 5,837 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5 zoning district within Area B2 of the Special Tribeca Mixed Use District; and

WHEREAS, the site is currently occupied by a parking lot, with an attendant's booth and an advertising billboard; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot is irregularly-shaped; (2) the lot is small; and (3) the site is in a Zone A High Hazard Flood Plain; and

WHEREAS, as to the lot's shape, the applicant states that the lot has a narrow, wedge-like shape due to its location at an angular intersection of Canal Street and Washington Street; and

WHEREAS, specifically, the applicant states that the site is bounded on the north by Canal Street, with 90'-9" of frontage; to the west by Washington Street, with 84'-10" of frontage; and to the northwest with an additional 21'-5" of frontage at the corner where the street widens at the intersection; and

WHEREAS, the applicant represents that the irregularly-shaped lot creates difficulties in developing the site because there is a high ratio of exterior walls to usable interior space for such a long and narrow site; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the lot is small, which results in a disproportionate share of it being devoted to the building core, which includes elevators, stairways, and bathrooms and which is comparable in size to a core that could serve a building twice the size; and

WHEREAS, the applicant represents that this condition results in a higher percentage of lost floor space than for a larger building with the same core; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and a land use map of the area which illustrate that the site is one of only approximately three vacant parcels of the 56 sites reflected on the radius diagram and the only vacant site at the point where Canal Street widens; and

WHEREAS, as to the subsurface conditions, the applicant represents that additional foundation costs arise due to required dewatering during excavation, as well as waterproofing the foundation walls; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right retail/office building with an FAR of 5.0; and

WHEREAS, the applicant concluded that such a scenario would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular lot

conditions; and

WHEREAS, at hearing, the Board asked the applicant to revise the financial analysis to eliminate the value of 415 Washington Street from the comparables; and

WHEREAS, the Board did not find this comparable to be a useful comparison since its high sale value may be attributed to the Board grant associated with the site; and

WHEREAS, in response, the applicant removed the reference to 415 Washington Street's value and revised the financial analysis accordingly; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, some of which occupy the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the map reflects the following uses: an eight-story residential building directly across Canal Street, a six-story mixed-use residential/commercial building across Canal Street on the next block, and a six-story residential building and an eight-story residential building directly across Washington Street; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the character of the area is mixed-use, and finds that the introduction of seven dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the applicant states that the zoning district directly across Canal Street was recently rezoned to allow residential use and that the rezoned area is occupied almost entirely by residential uses; and

WHEREAS, the applicant states further that in the subject M1-5 zoning district, buildings constructed prior to December 15, 1961, with a lot coverage of less than 5,000 sq. ft., are permitted to convert all but the first floor to residential use as of right; and

WHEREAS, the applicant notes that there are additional authorizations from the City Planning Commission which permit residential conversions to buildings with lot coverage greater than 5,000 sq. ft.; and

WHEREAS, as to the height and massing, the applicant

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states that the proposed building would be similar in height to existing buildings in the neighborhood; and

WHEREAS, nevertheless, at hearing, the Board asked the applicant to address the compatibility of the proposed street wall and building heights to nearby buildings; and

WHEREAS, the applicant submitted information about nearby building heights which reflects that, across Canal Street, there are two completed buildings and one under construction, with heights of 120'-0" and higher; and

WHEREAS, on Washington Street, the applicant represents that the proposed 66'-0" street wall is compatible with the adjacent building's street wall of 65'-2"; the applicant represents that there are two even taller buildings on the block and adjacent subject block on the Washington Street frontage; and

WHEREAS, the applicant submitted an illustration noting the heights of buildings in proximity to the site; and

WHEREAS, the Board observes that there is a context for seven and eight-story buildings along Washington Street, Greenwich Street, and Canal Street in the vicinity of the subject site; and

WHEREAS, specifically, the Board observes that the proposed street wall on Washington Street is slightly lower in height to the street wall of the adjacent building and is also comparable to the street wall height of the building directly across the street; and

WHEREAS, similarly, the Board notes that the proposed street wall on Canal Street is compatible with the street wall heights of the building's directly across Canal Street; and

WHEREAS, the Board notes that the applicant proposes to setback the easternmost portion of the building on the Canal Street frontage, which is more compatible with the adjacent three and four-story buildings; and

WHEREAS, the applicant represents that after a minor revision to the originally submitted plans, the ninth floor has been slightly reduced in size so that it is not visible from Canal Street; and

WHEREAS, the applicant notes that the proposed building complies with all of the bulk regulations for a residential use in a C6-2A/R8A equivalent zoning district aside from the Canal Street street wall height and setback; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height and FAR are consistent with other buildings in the neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states, and the Board agrees, that the return associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed

building of seven dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA010M, dated October 19, 2006; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: an October, 2006 Environmental Assessment Statement and an October, 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, noise and air quality impacts; and

WHEREAS, a Restrictive Declaration was executed on December 27, 2006 and submitted for recordation on January 3, 2007 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, on a site within an M1-5 zoning district, within Area B2 of the Special Tribeca Mixed Use District, a nine-story residential building with retail use on the first floor and seven dwelling units above, which is contrary to ZR §§ 42-00 and ZR

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111-104(d), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 8, 2007"—eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: nine stories, seven residential units, a total floor area of 29,118 sq. ft. (4.99 FAR), a residential FAR of 4.53, a street wall height of 66'-0" on Washington Street and 102'-0" on Canal Street, a total height of 110'-6", without bulkheads and a maximum total height of 124'-6", with bulkheads;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 13, 2007.

218-06-BZ

CEQR #07-BSA-013M

APPLICANT – The Law Office of Fredrick A. Becker, for Tower Plaza Associates, Inc., owner; TSI East 48 Inc. d/b/a New York Sports Club, lessee.

SUBJECT – Application August 30, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the operation of an existing PCE located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building. The Premises is located in C1-9 (TA), R8B, and R10 zoning districts. The proposal is contrary to Z.R. §32-01(a).

PREMISES AFFECTED – 885 Second Avenue, westerly side of Second Avenue between East 47th Street and 48th Street, Block 1321, Lot 22, Borough of Manhattan.

COMMUNITY BOARD # 6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 24, 2006, acting on Department of Buildings Application No. 104492078, reads in pertinent part:

"The proposed Physical Culture Establishment in

the Sub-cellar and Cellar of this building is not a permitted use as of right in a C1-9 zoning district, and therefore is contrary to Section 32-01(a) of the Zoning Resolution."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district within the Special Transit Land Use District (TA), partially within an R8B zoning district, and partially within an R10 zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and sub-cellar levels of a 46-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Hinkson; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Second Avenue, between East 47th Street and East 48th Street; and

WHEREAS, the site is occupied by a 46-story commercial building; and

WHEREAS, the PCE will occupy a total of 13,427 sq. ft. of floor space, which includes 6,856 sq. ft. in the cellar and 6,571 sq. ft. in the sub-cellar; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

WHEREAS, the PCE will be operated as a New York Sports Club; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing the Board asked the applicant to confirm that the PCE would be located within the portion of the building which is in the C1-9 (TA) zoning district since the special permit is not available in either the R8B or R10 zoning district; and

WHEREAS, the applicant responded by revising the site plans to illustrate that the PCE is confined to the portion of the site located within the C1-9 (TA) zoning district; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.07BSA013M dated October 10, 2006; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 (TA) zoning district, partially within an R8B zoning district, and partially within an R10 zoning district, the establishment of a physical culture establishment on portions of the cellar and sub-cellar levels of a 46-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 8, 2006"-(2) sheets and "Received February 1, 2007"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 13, 2007.

236-06-BZ

APPLICANT – Moshe M. Friedman, for Michael Dalezman, owner.

SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, floor area (§23-141) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1500 East 21st Street, a/k/a Kenmore Place, 115' north of intersection formed by East 21st Street and Avenue N, Block 7656, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 15, 2006, acting on Department of Buildings Application No. 302222752, reads in pertinent part:

“Extension to . . . dwelling is contrary to:

ZR 23-141 Floor Area Ratio

ZR 23-141 Open Space Ratio

ZR 23-47 Rear Yard . . .”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a two-story two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on January 23, 2007, after due notice by publication in *The City Record*, and then to decision on

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February 13, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject lot is located on East 21st Street, 115 ft. north of the intersection formed by East 21st Street and Avenue N; and

WHEREAS, the subject lot has a total lot area of 3,750 sq. ft., and is occupied by a 2,506.12 sq. ft. (0.69 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the proposed enlargement involves a modest extension of the existing dwelling into the rear yard at both the first and second floors, and a modest extension of the dwelling in the front at the second floor and

WHEREAS, the applicant seeks an increase in the floor area from 2,506.14 sq. ft. (0.69 FAR) to 3,176.48 sq. ft. (0.85 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide for an open space ratio of 68 percent (an open space ratio of 150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard of 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will maintain the existing side yards of 7'-8 1/2" and 5'-5", as well as the existing lawful non-complying front yard at the first floor of 14'-11"; further, the modest extension in the front yard at the second floor will comply with the 15'-0" front yard requirement; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the FAR request is reasonable as it represents a modest increase to the existing FAR; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to

be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a two-story two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 27, 2006"-(9) sheets and "Received January 16, 2007"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,176.48 sq. ft., a total FAR of 0.85, an Open Space Ratio of 68 percent, and a rear yard of 20'-0", as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s); no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 13, 2007.

274-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required front yards (§23-45) and minimum lot width (§23-32) in an R3-2 zoning district.

PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough
Commissioner, dated February 7, 2007, acting on Department
of Buildings Application No. 402526682, reads in pertinent
part:

- “1. Proposed front yards are contrary to Z.R. section
23-45.
2. Existing lot size is contrary to Z.R. section 23-
32.”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R3-2 zoning district, the construction of a two-
story single-family dwelling without a complying front yard on
a lot that does not comply with minimum lot width, contrary to
ZR §§ 23-45 and 23-32; and

WHEREAS, the proposed dwelling will have the
following complying parameters: 1,071.74 sq. ft. of floor
area, a Floor Area Ratio (FAR) of 0.33, an open space ratio
of 84 percent, a wall height of 20’-0”, a total height of 25’-
9”, one front yard of 15’-0” ft., one front yard of 10’-0”, and
one parking space; and

WHEREAS, however, the lot is only 3,274 sq. ft.; the
minimum lot size in the subject R3-2 zoning district is 3,800
sq. ft.; and

WHEREAS, further, only one of the two required 15’-
0” front yards will be provided; the other front yard will
only be 8’-0”; and

WHEREAS, a public hearing was held on this
application on January 23, 2007, after due notice by publication
in *The City Record*, and then to decision on February 13, 2007;
and

WHEREAS, Community Board 10, Queens,
recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and
neighborhood examination by a committee of the Board,
consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, the site is a vacant triangular lot, bordered
by Lincoln Street to the east, 132nd Street to the west, and 116th
Avenue to the north; and

WHEREAS, the site is irregularly shaped, with 43 feet of
frontage along 116th Avenue, 153 feet of frontage along 132nd
Street, and approximately 159 feet of frontage along Lincoln
Street; and

WHEREAS, the applicant states that the site cannot be
developed at all without a variance, due to its insufficient lot
size, and also contends that front yard relief is necessary, for
reasons stated below; thus, the instant application was filed;
and

WHEREAS, the applicant states that the following are
unique physical conditions, which create practical difficulties
and unnecessary hardship in developing the subject site in
compliance with underlying district regulations: (1) the lot’s
small size; and (2) the irregular and triangular shape of the lot;

and

WHEREAS, as to the site’s size, the applicant notes that
the without a waiver of ZR § 23-32, which provides for a
minimum lot area of 3,800 sq. ft., the site could not be
developed at all; and

WHEREAS, the applicant has submitted evidence that
the subject lot has been in existence since at least prior to 1961;
and

WHEREAS, the Board agrees that no development on
the site is possible unless this requirement is waived; and

WHEREAS, as to the site’s shape, the applicant states
that its triangular shape results in a severely restricted width of
only 20’-3” at its widest point and 7’-8” at its narrowest; and

WHEREAS, the applicant notes that for a triangular
shaped lot, ZR § 23-45 requires the provision of two 15’-0”
front yards, and one 10’-0” front yard; and

WHEREAS, the applicant states that if two 15’-0” front
yards and one 10’-0” front yard were provided, the site’s
limited width, discussed above, would severely constrain the
floor plates that could be constructed, resulting in an
unmarketable home; and

WHEREAS, more specifically, the owner would be
forced to construct a triangular building with a width of 13 feet
at its widest point

WHEREAS, the Board agrees that the lot size and front
yard waivers are necessary in order to construct a habitable and
marketable dwelling; and

WHEREAS, thus, the Board finds that the
aforementioned unique physical conditions, when
considered in the aggregate, create a practical difficulty in
developing the site in compliance with the applicable zoning
provisions; and

WHEREAS, the Board has determined that because of
the subject lot’s unique physical conditions, there is no
reasonable possibility that a complying and viable development
could be constructed; and

WHEREAS, the applicant represents that the variance,
if granted, will not alter the essential character of the
neighborhood, will not substantially impair the appropriate
use or development of adjacent property, and will not be
detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed house
complies with all R3-2 district bulk parameters aside from lot
size and front yard, and that the proposed bulk and height is
compatible with the other residential buildings in the immediate
vicinity; and

WHEREAS, based upon its review of the submitted
land use map, the submitted pictures, and its site visit, the
Board observes that the site is surrounded by numerous
detached two-story dwellings, comparable in size or larger
than the proposed home; and

WHEREAS, in response to an inquiry from the Board
about the unspecified width of the adjoining sidewalks, the
applicant submitted new plans showing the dimensions of
the sidewalks; and

WHEREAS, specifically, the revised plans show that
two 15’-0” sidewalks and one 10’-0” sidewalk will be

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provided, which the applicant represents will be sufficient to accommodate anticipated pedestrian traffic in the area; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a two-story single-family dwelling without a complying front yard on a lot that does not comply with minimum lot width, contrary to ZR §§ 23-45 and 23-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 30, 2007"– (5) sheets; and *on further condition*:

THAT all bulk parameters, including front yards and the width of the adjacent sidewalks, shall be as reflected on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 13, 2007.

239-04-BZ

APPLICANT – Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side

of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).
PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik and Aldo Frugtacci.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for continued hearing.

318-05-BZ

APPLICANT – Marc A. Chiffert, P.E., for 2040 MLK Realty, LLC, owner.

SUBJECT – Application November 1, 2005 – Zoning variance under §72-21 to allow a proposed horizontal enlargement of an existing one-story non-conforming commercial building in an R7-1 district. The proposal calls for Use Group 6 retail use and is contrary to §52-22.

PREMISES AFFECTED – 2040 Dr. MLK JR. Boulevard f/k/a 2040 University Avenue, northeast corner of intersection of West Burnside Avenue and Dr. MLK Jr. Boulevard, Block 3210, Lot 2, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Marc A. Chiffert.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 13,

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2007, at 1:30 P.M., for continued hearing.

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

96-06-BZ

APPLICANT – Stuart A. Klein, Esq., for West Properties, Inc., owner; Acqua Beauty Bar NY, Inc., lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in a C5-P zoning district located within the Midtown Special District and Preservation Subdistrict, the placement of a Spa within the cellar, first and second floors of an existing six (6) story commercial building. The proposal is contrary to section 32-10.

PREMISES AFFECTED – 39 West 56th Street, north side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Madeline Fletcher.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for decision, hearing closed.

97-06-BZ

APPLICANT – Stuart A. Klein, Esq., for BFB Partners, LLC, owner; Thai Privilege Spa Company (NY), Limited, lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in an M1-5A zoning district located within the Landmark's Preservation Commission's Shoh Cast Iron District, the placement of a physical culture establishment (PCE) within a portion of an existing six (6) story commercial building.

PREMISES AFFECTED – 153-155 Spring Street, a/k/a 411 West Broadway, frontage east side of West Broadway, Block 501, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Madeline Fletcher.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for decision, hearing closed.

98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug, Rabbi Shnick and Marc Mariscal.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under § 72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§ 42-00), FAR (§ 43-12), and rear yard (§ 43-26 and § 43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Kenneth Fisher.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

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2007, at 1:30 P.M., for decision, hearing closed.

137-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45(b)) in an R4A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325’ south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD # 11BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Off-Calendar.

Jeff Mulligan, Executive Director

Adjourned: 5:00P.M.

275-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16’ west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisinier and Doris Diether, CB #2.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for deferred decision.

290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§ 42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, Jack Freeman and Doris Diether, CB #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20,